punitive damages or attorneys fees under state law. See, *e.g.*, *Flaks* v. *Koegel*, 504 F. 2d 702, 706–707 (C.A. 2); *Young* v. *Taylor*, 466 F. 2d 1329, 1337–1338 (C.A. 10); and *Coffee* v. *Permian Corp.*, 474 F. 2d 1040 (C.A. 5), certiorari denied, 412 U.S. 920. See III Loss, *Securities Regulation* 1624 (2d ed. 1961), VI Loss, *Securities Regulation* 3781–3783 (1969 Supp.).[5]

2. While we believe that the court of appeals' affirmance of the district court's dismissal of the antitrust count was erroneous as a matter of law, the case nevertheless involves a relatively unique situation that is not apt to recur with sufficient regularity to warrant review by this Court. In fact, neither we nor petitioners are aware of any prior cases in which manipulations involving securities, as distinguished from commodities, have been challenged as violative of both the antitrust and securities laws (Pet. 14). The decision therefore will have a negligible effect upon the efficacy of private treble-damage actions in supple-

[5] The court of appeals did not refer to the district court's dictum (Resp. App. A7) that, wholly apart from the interrelationship between the securities acts and the Sherman Act, stock market manipulations were not covered by the antitrust laws because they constituted fraud rather than restraint of trade at common law. This dictum is, we submit, incorrect. Under certain circumstances market manipulations may give rise to a cause of action under the Sherman Act. See *United States* v. *Patten*, 226 U.S. 525; *Chicago Mercantile Exchange* v. *Deaktor*, 414 U.S. 113. Consequently, in view of the well-established principle that a complaint cannot be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle it to relief (*Conley* v. *Gibson*, 355 U.S. 41, 45–46), we believe the courts below erred in dismissing the antitrust count.

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menting antitrust enforcement. Moreover, since the court of appeals' decision is restricted to the issue of overlapping private remedies, the decision would not significantly impede the government's antitrust enforcement efforts.

CONCLUSION

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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